

7. Reinventing Media Activism

During the late 1990s and early 2000s, communication-information policy (CIP) replaced the environment as the policy domain of greatest congressional activity. From 1997 to 2001, the annual number of Congressional hearings devoted to CIP topics surged to approximately 100 per year.

Previously, CIP issues were segregated across different media and industries and different legal regimes, and were mostly handled in a national institutional framework. Policy ideas about them were not closely related. Now they have come together into a unified policy domain and have become global in scope. The convergence of the media on digital technology has made issues such as privacy, infrastructure regulation, censorship, open source, intellectual property, digital identity and government information policy related, interdependent, and central to social and economic life. The complex of communication-information policy issues can now stand on its own. CIP engages directly with core problems of a post-industrial society and need not be subordinate to other social movements; it can mobilize new constituencies and generate major institutional changes.

The public interest advocacy group was an organizational innovation dating to the second half of the 1960s. Most of the growth in the organizational population took place in the 1970s, as the organizational form was being developed and legitimated. The number of public interest advocacy organizations focused on CIP grew rapidly from 1966 to 1981, and then stabilized at around 100 organizations. It is now a routine part of the policy making environment, in CIP as well as other areas. While that form of advocacy is still vibrant and effective and its continued presence is required to maintain a public interest voice in DC policy making, it is unlikely to catalyze major institutional changes. A major revival of public interest activity around CIP is more likely to come from a) new ideas about institutional arrangements and b) structural changes in political institutions that open up new kinds of access to members of the public. The global mobilization of civil society groups around the World Summit on the Information Society provides only a whiff of the sort of public mobilization that can happen when institutions change to open up new kinds of access to policy making processes. We believe that while activists and advocates are using information and communication technologies in creative ways, political institutions have hardly begun to make adjustments to the potentialities of information and communication technologies. True online activism, in the sense of an interface between the public and the government that gives online communications the same status as face-to-face lobbying, is a matter for the future. Today, we see only use of online tools to enhance and support traditional forms of citizen-government interactions.

Although the number of advocacy organizations has not changed much in the last twenty years, the rise of the Internet in the 1990s is associated with a major change in the *composition* of the advocacy organization population – a change, we believe, for the better. Many organizations focused on criticizing or regulating mass media content died off, although content-oriented advocacy remains a vital part of the total picture. The new

organizations formed in the 1990s and 2000s tend to be focused on rights-oriented advocacy related to digital technology, such as privacy rights, first amendment rights, and rights to fair use of intellectual property. There is also a growing recognition that how the communications infrastructure is regulated affects the preservation or protection of individual rights. Thus, rights-oriented advocacy begins to merge with economic modes of advocacy, further underscoring the need for an intellectually grounded, institutional approach to social change.

Property rights to information are already emerging as the key area of contention, replacing mass media content as the focal point of activism. As production and distribution costs fall, channels proliferate, powerful information processing tools diffuse and the cultural stock of stored content grows exponentially, the problem of “what program do we see on TV” becomes less interesting, and old concepts of public trustee regulation less defensible. More interesting and important are the underlying property rights of the information economy: who owns the information and for how long, who owns the network that gets it to you, what rights do you have to use that network or to reuse or share the content, how much are vendors allowed to know about your selections, how much surveillance are users subjected to, and so on. Copyright, software patents, open source, trademark, exclusive or nonexclusive use of the radio spectrum – all deal more or less directly with property rights as they are understood by institutional economics. Even the privacy issue deals with who owns and has access to personal data. Who owns and has access to infrastructure and how those ownership rights are related to First Amendment norms and values is also a critical issue.

In its measurement of testimony by public interest groups, the study found that during the 1960s, 1970s and 1980s, the American Civil Liberties Union dominated representation of public interest perspectives in Congressional testimony, accounting for 20% of all testimony by public interest groups of all ideologies on CIP topics. In the second half of the 1990s, however, the population of advocacy groups with a major voice in Washington diversified, and ACLU lost its dominance to organizations such as Center for Democracy and Technology (CDT), Electronic Privacy Information Center (EPIC), and the Consumers Union. The top ten advocacy organizations account for about 50% of all testimony by public interest groups in the CIP policy domain.

The population of public interest advocacy organizations focused on CIP is overwhelmingly liberal in ideological orientation. Conservative organizations as a percentage of the total population temporarily increased (from 15% to 21%) only in the 1980s, when liberal organizations’ share declined from 54% to 48%. Since the 1980s, however, liberal organizations’ share of the population has increased steadily, reaching 68% of all observations in the current decade. However, the meaning of “liberal” and “conservative” is shifting in the CIP domain, as ideological and cultural conservatives embrace “big government” in the form of pre-emptive wars, enormous budget deficits, pervasive surveillance, curtailment of civil liberties, and regulation of information technology to strengthen the interests of incumbent intellectual property holders.

While left-liberal advocacy groups have had a tremendous impact on the social norms applied to the media, they have had only a marginal impact on *economic* institutions. Whether it is the financial problems of public television, the marginal status of public access channels on cable, the absence of principled guidelines for media ownership restrictions, or the ambiguous legacy of broadcast license challenges, on economic issues left-liberal public interest groups have often been reactive or ineffective. There are various reasons for this. Some ultra-leftists are deeply wedded to fairy tales about pre-capitalist utopias. Others are so fixated on the cultural aspects of communication that they fail to take any serious account of the contribution of the ICT sector to jobs, development and growth. Others simply react to problems and abuses in the market system without appreciating the pitfalls of government regulation or thinking through the problem of institutionalizing better, economically sustainable alternatives. Despite the rejection of the economic structure of media that is implicit in much left-liberal media activism, advocacy groups still lack a coherent, theoretically grounded alternative to the critique of regulation and the norms of efficiency, growth and technical innovation advanced by the advocates of market liberalization. Any critique of the status quo capable of leading to lasting institutional change must be grounded in economic theory and not detached from the realities of economic behavior; i.e., wealth needs to be preserved and accumulated not dissipated, and people who invest time, energy and capital to create value deserve to be rewarded in some way, otherwise they will curtail their effort and investment.

A reinvented communication-information activism needs to develop an analytical framework that deeply comprehends the relationships between free expression, privacy, infrastructure regulation, intellectual property, digital identity and government information policy and relates social norms to them in ways that produce viable and effective policies. That rethinking has already begun, spearheaded by interdisciplinary legal thinkers such as Lessig, but much work remains to be done.